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similarly situated*

**THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA – SACRAMENTO DIVISION**

MICHAEL HELLMAN, individually
on behalf of himself and all others
similarly situated; FRANCISCO
BERLANGA, individually on behalf
of himself and all others similarly
situated; TIM ARTOFF, individually
on behalf of himself and all others
similarly situated; CY MITCHELL,
individually on behalf of himself and
all others similarly situated; and
JONATHAN LOLLAR, individually
on behalf of himself and all others
similarly situated,

Plaintiffs,

v.

POLARIS INDUSTRIES, INC., a
Delaware corporation; POLARIS

Case No.:

CLASS ACTION

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF FOR:**

- (1) Violation of the California
Consumer Legal Remedies Act;**
- (2) Violation of the California Unfair
Competition Law;**
- (3) Violation of California False
Advertising Law;**
- (4) Violation of the Oregon Unlawful
Trade Practices Act;**
- (5) Violation of the Nevada
Deceptive Trade Practices Act;
and**
- (6) Violation of the Texas Deceptive
Trade Practices Act.**

1 SALES, INC., a Minnesota
2 corporation; POLARIS INDUSTRIES,
3 INC., a Minnesota corporation; and
4 DOES 1 through 10, inclusive,
5 Defendants.

DEMAND FOR JURY TRIAL

**DECLARATION OF MICHAEL
HELLMAN**

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1 Plaintiffs MICHAEL HELLMAN, FRANCISCO BERLANGA, TIM
2 ARTOFF, CY MITCHELL, and JONATHAN LOLLAR (collectively,
3 “Plaintiffs”), individually and on behalf of all others similarly situated, allege the
4 following upon information and belief, based upon investigation of counsel,
5 published reports, and personal knowledge:

6 **I. NATURE OF THE ACTION**

7 1. Plaintiffs bring this action against defendants POLARIS
8 INDUSTRIES, INC. (the Delaware corporation), POLARIS SALES, INC.,
9 POLARIS INDUSTRIES, INC. (the Minnesota corporation and parent
10 corporation of the other two Polaris defendants) (collectively, “Defendants” or
11 “Polaris”) on behalf of all persons who purchased in California in the four years
12 preceding this Complaint, in Oregon in the four years preceding this Complaint,
13 in Nevada in the four years preceding this Complaint, in Texas in the four years
14 preceding this Complaint, Polaris Utility Terrain Vehicles (“UTVs”) (they are
15 also called side-by-sides) that Polaris claimed/advertised/marked/certified that the
16 vehicles’ rollover protection system (“ROPS”) complied with the department of
17 Occupational Safety and Health Administration (“OSHA”) requirements/standards of 29 C.F.R. § 1928.53 (which is for agricultural tractors).

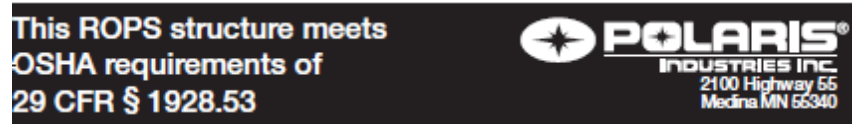
19 2. “Class Vehicles” is defined to include, but are not limited to the
20 following models: Polaris RZR XP 4 Turbo S; Polaris RZR XP 4 Turbo EPS,
21 Polaris RZR PRO XP Ultimate, Polaris RZR XP Turbo S; Polaris RZR XP Turbo
22 EPS; Polaris RZR XP 4 1000 High Lifter; Polaris RZR XP 4 Turbo S Velocity;
23 Polaris RZR PRO XP Premium; Polaris RZR XP 4 1000 Premium; Polaris RZR
24 XP 4 Turbo; Polaris RZR XP 4 Turbo Dynamix Edition; Polaris RZR XP 4 Turbo
25 Fox Edition; Polaris RZR XP 1000 Trails & Rocks; Polaris RZR PRO XP; Polaris
26 XP Turbo S Velocity; Polaris RZR XP 4 1000 Limited Edition; Polaris RZR XP 4
27 1000 EPS; Polaris RZR XP 4 1000 Ride Command; Polaris RZR XP 1000 EPS
28 High Lifter; Polaris RZR XP 1000 High Lifter; Polaris RZR XP 1000 EPS;

1 Polaris RZR XP 1000 EPS LE; Polaris RZR XP 1000 Ride Command; Polaris
2 RZR XP 4 1000; Polaris RZR XP Turbo; Polaris RZR XP Turbo Fox Edition;
3 Polaris RZR XP Turbo Dynamix Edition; Polaris RZR XP Turbo S; Polaris RZR
4 XP 1000 Premium; Polaris RZR 4 1000; Polaris RZR XP 1000 Limited Edition;
5 Polaris RZR XP 1000; Polaris RZR S 1000; Polaris RZR S 1000 EPS; Polaris
6 RZR S 900 Premium; Polaris RZR 900 Fox Edition; Polaris RZR S 900; Polaris
7 RZR S 900 EPS; Polaris RZR S4 900 EPS; Polaris RZR 900 Premium; Polaris
8 RZR RS1; Polaris RZR 900; Polaris RZR 4 900 EPS LE; Polaris RZR 4 900 EPS;
9 Polaris RZR 900 EPS Trail; Polaris RZR 900 EPS; Polaris RZR 900 EPS XC
10 Edition; Polaris RZR 900 Polaris; Polaris RZR 4 800 EPS LE; Polaris RZR 4 800
11 EPS; Polaris RZR S 800 EPS; Polaris RZR S 800 LE; Polaris RZR S 800; Polaris
12 RZR 800 EPS LE; Polaris RZR 800 EPS XC Edition; Polaris RZR 800 Polaris
13 Pursuit; Polaris RZR 800; Polaris RZR 570 Premium; Polaris RZR 570 EPS Trail
14 LE; Polaris RZR 570 EPS Trail; Polaris RZR 570 EPS LE; Polaris RZR 570 EPS;
15 Polaris RZR 570; Polaris RZR S 570 570 EPS; Polaris RZR 170 EFI; Polaris RZR
16 Turbo EPS; Polaris Ranger Crew XP 1000 EPS NorthStar Edition; Polaris Ranger
17 XP 1000 NorthStar Edition; Polaris Ranger Crew XP 1000 EPS NorthStar HVAC
18 Edition; Polaris Ranger XP 1000 EPS NorthStar HVAC Edition ; Polaris Ranger
19 XP 1000 EPS NorthStar Edition; Polaris Ranger Crew XP 1000 High Lifter
20 Edition; Polaris Ranger XP 1000 High Lifter Edition; Polaris Ranger Crew XP
21 1000 EPS High Lifter Edition; Polaris Ranger XP 1000 EPS High Lifter Edition;
22 Polaris Ranger Crew XP 1000 EPS Back Country Edition; Polaris Ranger XP
23 1000 EPS Back Country Limited Edition; Polaris Ranger Crew XP 1000 EPS
24 20th Anniversary Limited Edition; Polaris Ranger XP 1000 EPS 20th Anniversary
25 Limited Edition; Polaris Ranger Crew XP 1000 Texas Edition; Polaris Ranger XP
26 1000 Texas Edition; Polaris Ranger Crew XP 1000 Premium; Polaris Ranger
27 Crew XP 1000 EPS Premium; Polaris Ranger XP 1000 Premium; Polaris Ranger
28 Crew XP 1000 EPS; Polaris Ranger XP 1000 EPS; Polaris Ranger XP 1000 EPS

1 Ranch Edition; Polaris Ranger XP 1000 EPS Hunter Edition; Polaris Ranger XP
2 1000; Polaris Ranger Crew XP 900 EPS; Polaris Ranger XP 900 EPS; Polaris
3 Ranger XP 900 EPS Premium; Polaris Ranger Crew XP 900; Polaris Ranger XP
4 900; Polaris Ranger Crew XP 900-6 EPS; Polaris Ranger Crew XP 900-6; Polaris
5 Ranger Crew XP 900-5 EPS; Polaris Ranger Crew XO 900-5; Polaris Ranger XP
6 900; Polaris Ranger XP 900 EPS; Polaris Ranger XP 900 EPS High Lifter
7 Edition; Polaris Ranger XP 900 EPS Hunter Deluxe Edition; Polaris Ranger XP
8 900 EPS Hunter Edition; Polaris Ranger XP 900 EPS NorthStar Edition; Polaris
9 Ranger XP 900 EPS Trail Edition; Polaris Ranger XP 900 EPS LE; Polaris
10 Ranger XP 900 EPS Browning LE; Polaris Ranger XP 900 Deluxe; Polaris
11 Ranger XP 570 EPS; Polaris Ranger XP 570; Polaris Ranger Crew 1000
12 Premium; Polaris Ranger 1000 Premium; Polaris Ranger Crew 1000; Polaris
13 Ranger 1000 EPS; Polaris Ranger 1000; Polaris Ranger Crew 900 EPS; Polaris
14 Ranger Crew 900 EPS LE; Polaris Ranger Crew 900; Polaris Ranger Crew 900-6
15 EPS; Polaris Ranger Crew 900-6; Polaris Ranger 800 EFI; Polaris Ranger 800
16 Midsize; Polaris Ranger 800 EPS LE; Polaris Ranger Crew 800 EPS; Polaris
17 Ranger Crew 800; Polaris Ranger 800 EPS; Polaris Ranger Crew 570-6; Polaris
18 Ranger Crew 570-4 Premium; Polaris Ranger Crew 570-4 EPS; Polaris Ranger
19 Crew 570-4; Polaris Ranger Crew 570 EPS; Polaris Ranger Crew 570 EPS LE;
20 Polaris Ranger Crew EPS 570 Full-Size; Polaris Ranger 570 EPS; Polaris Ranger
21 570 EPS Hunter Edition; Polaris Ranger Crew 570 EFI; Polaris Ranger 570 EFI;
22 Polaris Ranger Crew 570 Full-Size; Polaris Ranger 570 Full-Size; Polaris Ranger
23 Crew 570; Polaris Ranger 570; Polaris Ranger 500; Polaris Ranger 400; Polaris
24 Ranger 150 EFI; Polaris Ranger 6X6; Polaris Ranger Diesel HST Deluxe; Polaris
25 Ranger Diesel HST; Polaris Ranger Crew Diesel; Polaris Ranger Diesel; Polaris
26 Ranger EV; Polaris Ranger EV LI-ION; Polaris Ranger ETX; Polaris General 4
27 1000 EPS Deluxe; Polaris General 4 1000; Polaris General 4 1000 EPS; Polaris
28 General 4 1000 Ride Command Edition; Polaris General 1000 Deluxe; Polaris

1 General 1000 Premium; Polaris General 1000; Polaris General 1000 Ride
2 Command Edition; Polaris General 1000 Hunter Edition; Polaris General 1000
3 Limited Edition; Polaris General 1000 EPS; Polaris General 1000 EPS Deluxe;
4 Polaris General 1000 EPS Hunter Edition; and Polaris General 1000 EPS Ride
5 Command Edition.

6 3. Polaris includes stickers like the following to suggest that their
7 vehicles meet these OSHA requirements:



10 4. The stickers are placed on Class Vehicles and are visible at the point
11 of sale where consumers are also informed that Class Vehicles meet all applicable
12 standards and regulations, including self-adopted regulations, and meet OSHA
13 requirements of 29 C.F.R. § 1928.53, when in fact, they do not.

14 5. None of the Class Vehicles sold by Polaris meet the OSHA
15 requirements of 29 C.F.R. § 1928.53. Polaris tells all of their customers that their
16 ROPS are safe because they meet this standard. They do not. Polaris has also
17 staved off federal regulations by the U.S. Consumer Product Safety Commission
18 (“CPSC”) in part by causing the adoption of newly created industry standards as
19 part of the self-regulation revolution. Even after adopting farm tractor standards
20 issued for worker safety on farms in the early 1970s, Polaris cheats and does not
21 even meet those standards.

22 6. Roof strength is a vital safety concern to consumers given the strong
23 likelihood of UTVs rolling over. The failure to meet all applicable federal and
24 state statutes, standards, regulations, and self-adopted regulations, including
25 OSHA 29 C.F.R. § 1928.53 requirements is material information for consumers
26 purchasing/leasing UTVs, such as the Class Vehicles.

27 7. While many violations are described below with specificity, this
28 Complaint alleges violations of the statutes cited in their entirety.

1 8. Unless otherwise stated, Plaintiffs allege that any violations by
2 Polaris were knowing and intentional, and that Polaris did not maintain procedures
3 reasonably adapted to avoid any such violation.

4 9. Unless otherwise indicated, the use of any defendant's name in this
5 Complaint includes all agents, employees, officers, members, directors, heirs,
6 successors, assigns, principals, trustees, sureties, subrogees, representatives, and
7 insurers of that defendant's name.

8 **II. UTVS SOLD BY POLARIS**

9 10. A UTV is a motorized vehicle with four or more low pressure tires
10 designed for off-road use and intended by the manufacturer primarily for
11 recreational use by one or more persons. UTVs are a relatively new product in the
12 motorized off-road category, and their speed and design make them unique from
13 all-terrain vehicles ("ATVs"). The main distinction is that an ATV is defined by
14 federal law, in part as: any motorized, off-highway vehicle designed to travel on 3
15 or 4 wheels, having a seat designed to be straddled by the operator and handlebars
16 for steering control. 15 U.S.C. § 2089(e)(1)(A).

17 11. A UTV, unlike an ATV, has traditional seating like an automobile
18 with bench or bucket seats, a restraint system, and is equipped with a steering
19 wheel. UTVs are similar in design to golf carts with throttle and brake pedals.
20 While golf carts travel approximately 15 miles per hour or less, UTVs such as the
21 Polaris Rangers and Razors have top speeds well in excess of 60 miles per hour.
22 Polaris UTVs are powered by strong engines with up to 181 horsepower.

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12. The images depicted below are from Polaris' most recent earnings report and website. They show the Rangers and Razors, which do not look like slow 1970s farm tractors:



13. UTVs were introduced into the United States market in the late 1990s. In 1998, only 2,000 UTVs were sold, all by one manufacturer. Polaris entered the market in 2000. By 2003, 20,000 UTVs were sold in the United States. That number then grew dramatically. There was a 19% growth from calendar year 2006 over 2005 levels with approximately 255,000 UTVs sold worldwide. In its most recent second quarter of 2019 earnings report, Polaris estimated nearly 1

1 billion in gross sales in the quarter. Polaris possesses the top spot in the North
2 American market share ranks and has a three -fold lead on its nearest competitor.

3 14. Polaris UTVs are sold at retail with an approximate median base
4 price of around \$12,999.99 and sell at prices exceeding \$20,000.00. The price is
5 similar to entry and midsize automobiles.

6 **III. JURISDICTION AND VENUE**

7 15. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because plaintiff
8 Michael Hellman purchased his 2018 Polaris RZR in Tehama County in the State
9 of California, and Plaintiffs seek relief on behalf of a California Class, an Oregon
10 Class, a Nevada Class and a Texas Class. Defendants' principal place of business
11 is located in Minnesota. In addition, the matter in controversy exceeds \$5,000,000
12 exclusive of interest and costs. Therefore, both diversity jurisdiction and the
13 damages threshold under the Class Action Fairness Act of 2005 ("CAFA") are
14 present, and this Court has jurisdiction.

15 16. Venue is proper pursuant to 28 U.S.C. § 1391 for the following
16 reasons: (i) the conduct complained of herein occurred within this judicial district;
17 and (ii) Defendants conducted business within this judicial district at all times
18 relevant.

19 17. Because Defendants conducted business within the State of
20 California at all time relevant, personal jurisdiction is established.

21 **IV. PARTIES**

22 18. Plaintiff Michael Hellman ("Hellman") is an individual who resides
23 in the State of California. Plaintiff is a member of the putative California Class
24 defined herein.

25 19. Plaintiff Francisco Berlanga ("Berlanga") is an individual who
26 resides in the State of California. Plaintiff is a member of the putative California
27 Class defined herein.

28 ///

1 20. Plaintiff Tim Artoff (“Artoff”) is an individual who resides in the
2 State of Oregon. Plaintiff is a member of the putative Oregon Class defined
3 herein.

4 21. Plaintiff Cy Mitchell (“Mitchell”) is an individual who resides in the
5 State of Nevada. Plaintiff is a member of the putative Nevada Class defined
6 herein.

7 22. Plaintiff Jonathan Lollar (“Lollar”) is an individual who resides in the
8 State of Texas. Plaintiff is a member of the putative Texas Class defined herein.

9 23. Plaintiffs are informed and believe, and upon such information and
10 belief allege thereon, that defendant Polaris Industries, Inc. is a Delaware
11 Corporation with its principal place of business at 2100 Highway 55, Medina,
12 Minnesota 55340-9770. Its agent for service of process is The Corporation Trust
13 Company, 1209 Orange Street, Wilmington, Delaware 19801.

14 24. Plaintiffs are informed and believe, and upon such information and
15 belief allege thereon, that defendant Polaris Sales, Inc. is a Minnesota Corporation
16 with its principal place of business at 2100 Highway 55, Medina, Minnesota
17 55340-9770. Its agent for service of process in California is CT Corporation
18 System located at 818 West 7th Street, Suite 930, Los Angeles, California 90017.

19 25. Plaintiffs are informed and believe, and upon such information and
20 belief allege thereon, that defendant Polaris Industries, Inc. is a Minnesota
21 Corporation with its principal place of business at 2100 Highway 55, Medina,
22 Minnesota 55340-9770. It is the parent company of both defendant Polaris
23 Industries, Inc. the Delaware Corporation and Polaris Sales, Inc. Its agent for
24 service of process is CT Corporation System Inc., 101 Date Street N., St. Paul,
25 Minnesota 55117-5603.

26 26. Polaris maintains their largest and distribution center facility in
27 California. Polaris at all relevant times herein sold vehicles to members of the
28 general public as well as designing, testing, manufacturing, inspecting,

1 distributing, recalling them, and warning and instructing users on the safe use of
2 the motor vehicles, including the subject vehicles, in exchange for valuable
3 consideration in Tehama County.

4 27. The above-named Defendants, and their subsidiaries and agents, are
5 collectively referred to as “Defendants.” The true names and capacities of the
6 Defendants sued herein as Doe Defendants 1 through 10, inclusive, are currently
7 unknown to Plaintiffs, who therefore sue such Defendants by fictitious names.
8 Each of the Defendants designated herein as a Doe is legally responsible for the
9 unlawful acts alleged herein. Plaintiffs will seek leave of Court to amend the
10 Complaint to reflect the true names and capacities of the Doe Defendants when
11 such identities become known.

12 28. Plaintiffs are informed and believe, and thereon allege, that at all
13 relevant times, each and every Defendant was acting as an agent and/or employee
14 of each of the other Defendants, and was the owner, agent, servant, joint venturer
15 and employee, each of the other and each was acting within the course and scope
16 of its ownership, agency, service, joint venture and employment with the full
17 knowledge and consent of each of the other Defendants. Plaintiffs are informed
18 and believe, and based thereon allege, that each of the acts and/or omissions
19 complained of herein was made known to, and ratified by, each of the other
20 Defendants.

21 29. At all times mentioned herein, each and every Defendant was the
22 successor of the other and each assumes the responsibility for each other’s acts
23 and omissions.

24 **V. FACTUAL ALLEGATIONS**

25 ***A. The Government Considers Regulations for UTVs***

26 30. Polaris UTVs are subject to product safety standards administered by
27 the CPSC, not the National Highway Traffic Safety Administration (“NHTSA”).
28 UTVs are “consumer products” that can be regulated by the CPSC via the

1 Consumer Product Safety Act. 15 U.S.C. § 2052(a).

2 31. On December 12, 2008, the CPSC met with representatives of the
3 Recreational Off-Highway Vehicle Association (“ROVHA”) to discuss the
4 development of a standard to be certified by the American National Standards
5 Institute (“ANSI”). The standards discussed, at this time, involved stability
6 standards. In June 2009, ROHVA sent over proposed voluntary standards,
7 including one for the ROPS. Ken D’Entremont and Mary McConnell attended the
8 meeting for Polaris. Paul Vitrano attended for ROHVA.

9 32. In 2009, the CPSC began the process of considering regulatory action
10 of UTVs. (In CPSC nomenclature they are ROVs.) It issued a Notice of Proposed
11 Rulemaking. The CPSC noted that farm vehicles have maximum speeds of 25
12 mph or less, while UTVs at the time could exceed 30 mph. The CPSC identified
13 its databases of Injury and Potential Injury Incidents (IPII) and In-Depth
14 Investigation (INDP) for incidents between January 2003 and August 2009
15 involving 181 incidents, including 116 fatalities and 152 other injuries. The
16 injuries included deglovings, fractures and crushing injuries to victims’ legs, feet,
17 arms and hands, resulting in amputations at times. 69% of the injuries occurred in
18 rollover incidents.

19 33. By April 2013, the CPSC was aware of 428 incidents resulting in 231
20 fatalities and 388 other injuries. 150 of the 231 deaths were in rollover accidents.

21 **B. *The 1970s OSHA Regulation for ROPS on Farm Tractors***

22 34. In 1972, the U.S. Department of Labor concerned that “[t]ractor roll-
23 overs have been a major cause of employee injury and death on the farm”
24 appointed the Standards Advisory Committee on Agriculture to make a ROPS
25 standard a priority.

26 35. After the notice of proposed rulemaking notice period, the
27 Department of Labor, via OSHA promulgated 29 C.F.R. §§ 1928.51 (definitions),
28 1928.52 and 1928.53 (ROPS strength test).

1 36. The test for the ROPS strength involves forces applied to the ROPS
2 and it measures the deflection caused by the force. If there is too much deflection
3 the ROPS fails the tests. How much force is applied, according to the regulation
4 depends on the tractor weight.

5 37. Tractor weight is defined pursuant to 29 C.F.R. §§ 1928.51(a)(4) as:

6 “Tractor weight” includes the protective frame or enclosure, all fuels,
7 and other components required for normal use of the tractor. Ballast
8 shall be added as necessary to achieve **a minimum total weight** of
9 110 lb. (50.0 kg.) per maximum power take-off horse power at the
10 rated engine speed or the maximum, gross vehicle weight specified by
11 the manufacturer, **whichever is the greatest**. From end weight shall
12 be at least 25 percent of the tractor test weight. **In case power take-
off horsepower is not available, 95 percent of net engine flywheel
horsepower shall be used.**

13 38. Thus, the weight to be tested is either the gross vehicle weight (about
14 2,000 to 2,400 pounds, or the 110 pounds multiplied by the maximum power take
15 off horse power. The statute specifically indicates if the tractor is not one where
16 you can measure the “power take off” horsepower, or PTO, then 95 percent of net
17 engine flywheel horsepower is used.

18 **C. ROHVA, a Polaris-Controlled Entity, Adopts the 29 C.F.R. §**
19 **1928.53 Test**

20 39. In order to avoid CPSC promulgating actual regulations, Polaris and
21 the industry set up new standards with which they would comport. One of these
22 was for the strength of the ROPS. This was done via ROHVA, which is
23 controlled, in part by Polaris. ROHVA adopted the tractor ROPS test of 29 C.F.R.
24 §§ 1928.51, *et seq.*, This was then made into an ANSI standard.

25 **D. Polaris Cheats and None of the Class Vehicles Passes the 29 C.F.R.**
26 **§ 1928.53 Test**

27 40. The Class Vehicles consisting of 2015 to 2019 Polaris UTVs are
28 believed to have horsepower ranging from approximately 168 horsepower to 68

1 horsepower for the smaller 2-door Rangers.

2 41. For every model of Class Vehicles, Polaris tested the vehicles by the
3 gross vehicle weight. Polaris intentionally refused to test at 110 pounds times
4 either the maximum power take off horsepower or 95% of the net engine flywheel
5 horsepower. For example, the 2019 RZR XP 4 Turbo is tested at 2750 pounds (the
6 gross vehicle weight is 2713 pounds). It has 168 horsepower. 95% of 168
7 horsepower is 159.6. Rounding down, would be 159. So, 110 pounds multiplied
8 by 159 is 17,490. The correct “W” or tractor weight in the test, should be 17,490
9 pounds. Polaris intentionally refused to use the correct tractor weight of
10 approximately 17,490 pounds. Instead, it used 2,750 pounds. Polaris did not
11 comply with the test. Polaris misled all Class members.

12 42. The Polaris vehicles are lighter and have much stronger engines than
13 farm tractors. Hence, their gross vehicle weights are comparatively lower, and 110
14 pounds times their PTO horsepower (or 95% of the net fly wheel horsepower) is
15 going to be larger than that of the farm tractors.

16 43. In fact, the gross vehicle weight, due the specifications of the Class
17 Vehicles should never be used for the OSHA tests. 110 pounds times the PTO
18 horsepower (or 95% of the net fly wheel horsepower) of each Class Vehicle is
19 substantially greater than the gross vehicle weights.

20 44. Not a single Class Vehicle has been tested using the proper Tractor
21 Weight pursuant to 29 C.F.R. §§ 1928.51, *et seq.*, Polaris advertised and told the
22 public that each and every Class Vehicle passed the OSHA 29 C.F.R. § 1928.53
23 test. None did.

24 45. In failing to provide consumers accurate and truthful information
25 about the true nature and characteristics of the Class Vehicles pertaining to
26 compliance with all applicable federal and state statutes, standards, and
27 regulations, including self-adopted regulations, specifically OSHA requirements
28 of 29 C.F.R. § 1928.53, consumers are damaged based on the benefit of the

1 bargain, that they have to retrofit the Class Vehicles for adequate safety, and are
2 faced with a strong likelihood of serious injury or death.

3 46. Polaris is believed to have digital computer models of the ROPS
4 system that can be inputted into commercially available computer aided
5 engineering programs. They test the ROPS system via an outside entity and using
6 the computer aided engineering systems. It would be easy to ascertain whether the
7 ROPS system meet the tests by inputting the correct Tractor Weight instead of the
8 lower gross vehicle weight.

9 **E. *Polaris Cheats by Improperly Distributing the Load and None of***
10 ***the Class Vehicles Pass the 29 C.F.R. 1928.53 Side Load Test***

11 47. The Class Vehicles' ROPS, being an integral part of each vehicle's
12 enclosure, are required to conform with the "side load" test as described in 29
13 C.F.R. § 1928.53(d)(2)(iii)(F). In essence, the integrity of the structure is tested by
14 applying force to one side of the vehicle. Specifically, the test requires that:

15 When the protective-frame structures are an integral part
16 of the enclosure, apply the side load according to Figure
17 C-13, and record *L* and *D* simultaneously. Static side-load
18 application shall be distributed uniformly on the frame
19 over an area perpendicular to the direction of load
20 application [...] **This side load shall be applied to the
longitudinal side farthest from the point of rear-load
application.**

21 29 C.F.R. § 1928.53(d)(2)(iii)(F).

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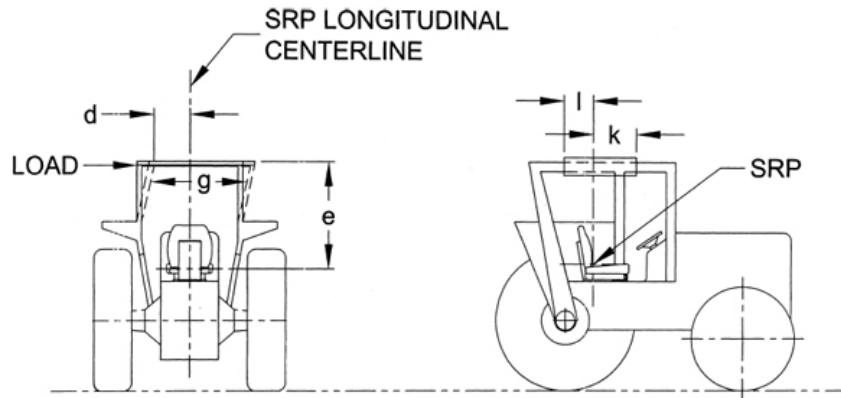


FIGURE C-13 - SIDE LOAD APPLICATION.

48. Polaris cheats when it performs the side load test. Instead of following OSHA guidelines and applying force to a single side, Polaris uses a tool commonly known as a “load distributor” during the test to distribute the load parallel across the top of the enclosure to the other side of the vehicle. The “load distributor” does as the name suggests and spreads out the applied force. By doing so, force is applied to ***both*** sides of the enclosure and not the one side as required by the OSHA standard.

49. Polaris purposefully uses the load distributor for every side load test to ensure that every Class Vehicle “passes” the test.

50. In failing to provide consumers accurate and truthful information about the true nature and characteristics of the Class Vehicles pertaining to compliance with all applicable federal and state statutes, standards, and regulations, including self-adopted regulations, specifically OSHA requirements of 29 C.F.R. § 1928.53, consumers are damaged based on the benefit of the bargain, that they have to retrofit the Class Vehicles for adequate safety, and are faced with a strong likelihood of serious injury or death.

F. *Plaintiffs’ Transactions*

51. On or around May 26, 2018, Hellman purchased a 2018 Polaris RZR Turbo S in Tehama County, California.

1 52. Hellman saw and read the label/sticker on the 2018 Polaris RZR XP
2 similar to the picture listed below:



8 53. Based on Hellman's employment experience in the HVAC industry,
9 he understood that OSHA requirements were federal regulations pertaining to
10 safety. Hellman read the sticker on the 2018 Polaris RZR Turbo S and understood
11 the language to mean that the vehicle's ROPS structure met federal standards for
12 safety and that the vehicle was safe for use by him, his family, and friends.

13 54. Hellman, in seeing and reading the sticker, relied on the language
14 contained therein to purchase the 2018 Polaris RZR Turbo S. If the sticker said
15 that the ROPS structure failed to meet OSHA requirements, he would not have
16 purchased the 2018 Polaris RZR Turbo S.

17 55. Hellman bought a Cage WRX aftermarket ROPS after Polaris
18 recalled certain ROPS. Hellman became aware of how weak Polaris' cages were
19 and did not feel it provided the safety necessary to protect himself and his
20 passengers.

21 56. In or around May 18, 2019, Berlanga purchased a 2018 Polaris RZR
22 570 EPS in California.

23 57. Berlanga saw and read the label/stickers on the 2018 Polaris RZR
24 570 EPS as depicted below:

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58. Berlanga was originally going to purchase an ATV, not a UTV. However, based on the fact the 2018 Polaris RZR 570 EPS had a roll cage/ROPS structure and being informed that the ROPS met OSHA standards, Berlanga read the sticker on the 2018 Polaris RZR 570 EPS and understood the language to mean that the vehicle's ROPS structure met federal standards for safety and that the vehicle was safe for use by him, his family, and friends.

59. Berlanga, in seeing and reading the sticker, relied on the language contained therein to purchase 2018 Polaris RZR 570 EPS. If the sticker said that the ROPS structure failed to meet OSHA requirements, he would not have purchased the 2018 Polaris RZR 570 EPS.

60. In 2021, Artoff purchased a 2021 RZR Turbo S Velocity in Oregon.

61. Artoff saw and read the label/sticker on the 2021 RZR Turbo S Velocity pictured below:



///

1 62. Based on Artoff's employment experience as a peace officer, he
2 understood that OSHA requirements were federal regulations pertaining to safety.
3 Artoff read the sticker on the 2021 RZR Turbo S Velocity and understood the
4 language to mean that the vehicle's ROPS structure met federal standards for
5 safety and that the vehicle was safe for use by him, his family, and friends.

6 63. Artoff, in seeing and reading the sticker, relied on the language
7 contained therein to purchase the 2021 RZR Turbo S Velocity. If the sticker said
8 that the ROPS structure failed to meet OSHA requirements, he would not have
9 purchased the 2021 RZR Turbo S Velocity.

10 64. In 2019, Mitchell purchased a new 2019 RZR XP Turbo in Nevada.

11 65. Mitchell saw and read the label/sticker on the 2019 RZR XP Turbo
12 similar to the picture listed below:



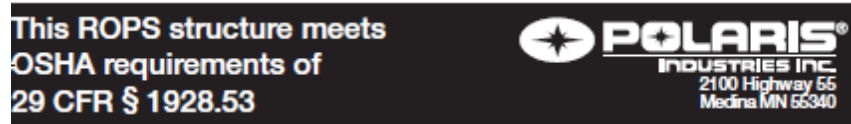
13
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18 66. Mitchell understood that OSHA requirements were federal
19 regulations pertaining to safety. Mitchell read the sticker on the 2019 RZR XP
20 Turbo and understood the language to mean that the vehicle's ROPS structure met
21 federal standards for safety and that the vehicle was safe for use by him, his
22 family, and friends.

23 67. Mitchell, in seeing and reading the sticker, relied on the language
24 contained therein to purchase the 2019 RZR XP Turbo. If the sticker said that the
25 ROPS structure failed to meet OSHA requirements, he would not have purchased
26 the 2019 RZR XP Turbo.

27 68. Mitchell had a roll over and the ROPS collapsed due to it being weak
28 and unsafe for consumers.

69. On or around December 19, 2021, Lollar purchased a 2021 Polaris RZR XP 4 Turbo in Texas.

70. Lollar saw and read the label/sticker on the 2021 Polaris RZR XP 4 Turbo which contained the sticker at the time of sale as depicted below, suggesting that Polaris vehicles meet these OSHA requirements:



71. Lollar read the sticker on the 2021 Polaris RZR XP 4 Turbo and understood the language to mean that the vehicle's ROPS structure met federal standards for safety and that the vehicle was safe for use by him, his family, and friends.

72. Lollar, in seeing and reading the sticker, relied on the language contained therein to purchase the 2021 Polaris RZR XP 4 Turbo. If the sticker said that the ROPS structure failed to meet OSHA requirements, he would not have purchased the 2021 Polaris RZR XP 4 Turbo.

73. The stickers placed on Plaintiffs' Polaris vehicles as well as Class Vehicles and are visible at the point of sale where consumers are also informed that Class Vehicles meet all applicable standards and regulations, including self-adopted regulations, and meet OSHA requirements of 29 C.F.R. § 1928.53, when in fact, they do not.

74. None of the Class Vehicles sold by Polaris meet the OSHA requirements of 29 C.F.R. § 1928.53. Polaris tell all of their customers that their ROPS systems are safe because they meet this standard. They do not. **They do not test the with the proper engine power in determining the vehicle weight.**

75. But for Defendants' misrepresentations, misleading and fraudulent statements, Plaintiffs would not have purchased the vehicles or would have paid substantially less for the vehicles than the purchase price of upwards of \$20,000.00 each. Plaintiffs did not receive the benefit of the bargain.

1 76. In failing to provide consumers accurate and truthful information
2 about the true nature and characteristics of the Class Vehicles pertaining to
3 compliance with all applicable federal and state statutes, standards, and
4 regulations, including self-adopted regulations, specifically OSHA requirements
5 of 29 C.F.R. § 1928.53, consumers are damaged based on the benefit of the
6 bargain, that they have to retrofit the Class Vehicles for adequate safety, and are
7 faced with a strong likelihood of serious injury or death.

8 **VI. CLASS ALLEGATIONS**

9 77. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules
10 of Civil Procedure and/or other applicable law, on behalf of themselves and all
11 others similarly situated, as members of the proposed classes, per their state
12 defined as follows.

13 78. California Class (Hellman and Berlanga): All persons in California
14 that purchased a Class Vehicle in the four years preceding the filing of this
15 Complaint.

16 79. Oregon Class (Artoff): All persons in Oregon that purchased a Class
17 Vehicle in the four years preceding the filing of this Complaint.

18 80. Nevada Class (Mitchell): All persons in Oregon that purchased a
19 Class Vehicle in the four years preceding the filing of this Complaint.

20 81. Texas Class (Lollar): All persons in Texas that purchased a Class
21 Vehicle in the four years preceding the filing of this Complaint.

22 82. Excluded from the Classes are governmental entities, Defendants,
23 any entity in which Defendants have a controlling interest, and Defendants'
24 officers, directors, affiliates, legal representatives, employees, co-conspirators,
25 successors, subsidiaries, and assigns. Also excluded from the Classes are any
26 judges, justices or judicial officers presiding over this matter and the members of
27 their immediate families and judicial staff.

28 ///

1 83. Plaintiffs do not know the exact number of persons in the Classes,
2 but believe them to be in the several hundreds, if not thousands, making joinder of
3 all these actions impracticable.

4 84. The identity of the individual members is ascertainable through
5 Defendants' and/or Defendants' agents' records or by public notice.

6 85. There is a well-defined community of interest in the questions of law
7 and fact involved affecting the members of the Classes.

8 86. Plaintiffs will fairly and adequately protect the interest of the Classes.

9 87. Plaintiffs retained counsel experienced in consumer class action
10 litigation.

11 88. Plaintiffs' claims are typical of the claims of the Classes, which all
12 arise from the same operative facts involving Defendants' practices.

13 89. A class action is a superior method for the fair and efficient
14 adjudication of this controversy.

15 90. Class-wide damages are essential to induce Defendants to comply
16 with the federal and state laws alleged in the Complaint.

17 91. Class members are unlikely to prosecute such claims on an individual
18 basis since the individual damages are small. Management of these claims is
19 likely to present significantly fewer difficulties than those presented in many class
20 claims, e.g., securities fraud.

21 92. Plaintiffs and the Classes seek injunctive relief against Defendants to
22 preclude Defendants from advertising that the Class Vehicles comply with OSHA
23 29 C.F.R. § 1928.53 until they meet the tests using the correct Tractor Weight as
24 defined in 29 C.F.R. § 1928.51(a)(4).

25 93. On April 6, 2017 in *McGill v. Citibank, N.A.*, 2 Cal.5th 945 (2017),
26 the California Supreme Court ruled that any contract that waives the statutory
27 remedy of public injunctive relief under the Unfair Competition Law, False
28 Advertising Law, and Consumers Legal Remedies Act is contrary to California

1 public policy and this unenforceable under California law. Plaintiffs and the
2 Classes seek injunctive relief under the Unfair Competition Law, Cal. *Bus. &*
3 *Prof. Code* §§ 17200, *et seq.* due to Defendants' violation of the False Advertising
4 Law, Consumer Legal Remedies Act, Breach of Express Warranty, and Breach of
5 Implied Warranty based on Defendants' unlawful, unfair, and fraudulent business
6 practices and misleading advertisements that the Class Vehicles meet all
7 applicable federal and state statutes, standards, regulations, including OSHA
8 requirements of 29 C.F.R § 1928.53. Plaintiffs and the Classes seek to enjoin
9 Defendants' illegal business practices of advertising and informing consumers that
10 the Class Vehicles meet all applicable federal and state statutes, standards,
11 regulations, including OSHA requirements of 29 C.F.R § 1928.53, when they in
12 fact, do not.

13 94. As such, Plaintiffs and the Classes seek public injunctive relief to
14 prevent Defendants from continuing with their unlawful business acts and
15 practices as alleged herein to ensure that Defendants do not continue to harm the
16 general public by continuing to engage in the unlawful business acts and practices
17 as alleged herein.

18 95. Plaintiffs, individually, and on behalf of all California, Oregon,
19 Nevada and Texas consumers, seek individual, representative, and public
20 injunctive relief and any necessary order or judgments that will prevent
21 Defendants from continuing with their unlawful business acts and practices as
22 alleged herein.

23 96. Defendants acted on grounds generally applicable to the Classes
24 thereby making appropriate final declaratory relief with respect to the Classes as a
25 whole.

26 97. Members of the Classes are likely to be unaware of their rights.

27 98. Plaintiffs contemplate providing notice to the putative class members
28 by direct mail in the form of a postcard and via publication.

1 99. Plaintiffs request certification of a hybrid class combining the
2 elements of Fed. R. Civ. P. 23(b)(3) for monetary damages and Fed. R. Civ. P.
3 23(b)(2) for equitable relief.

4 100. This action is properly maintainable as a class action. This action
5 satisfies the numerosity, typicality, adequacy, predominance and superiority
6 requirements for a class action.

7 101. **Numerosity:** The proposed Classes are so numerous that individual
8 joinder of all members is impracticable. Due to the nature of the trade and
9 commerce involved, Plaintiffs do not know the number of members in the Classes,
10 but believe the Class members number in the thousands, if not more. Plaintiffs
11 allege that the Classes may be ascertained by the records maintained by
12 Defendants.

13 102. Plaintiffs and members of the Classes were harmed by the acts of
14 Defendants in at least the following ways: violation of California's Consumers
15 Legal Remedies Act, Cal. Civ. Code §§ 1770(a)(5), (a)(7), (a)(9), (a)(13), (a)(14)
16 and (a)(19); violations of California's Unfair Competition Law and False
17 Advertising Law; violations of the Oregon Unlawful Trade Practices Act,
18 violations of the Nevada Deceptive Trade Practices Act; and violations of the
19 Texas Deceptive Trade Practices Act.

20 103. **Commonality:** There are questions of law and fact common to
21 Plaintiffs and the Classes that predominate over any questions affecting only
22 individual members of the Classes. These common questions of law and fact
23 include, without limitation:

- 24 i. Whether Defendants failed to test the Class Vehicles using the
25 correct Tractor Weight as defined by 29 C.F.R. § 1928.51(a)(4);
- 26 ii. Whether Defendants violated Cal. Civ. Code §§ 1770, *et seq.*;
- 27 iii. Whether Defendants' practices are "unfair" as defined by Cal. Bus. &
28 Prof. Code §§ 17200, *et seq.*;

- iv. Whether Defendants’ practices are “illegal” as defined by Cal. *Bus. & Prof. Code* §§ 17200, *et seq.*;
- v. Whether Defendants’ practices are “fraudulent” as defined by Cal. *Bus. & Prof. Code* §§ 17200, *et seq.*;
- vi. Whether such practices violate Cal. *Bus. & Prof. Code* §§ 17200, *et seq.*;
- vii. Whether Defendants violated Cal. *Bus. & Prof. Code* §§ 17500, *et seq.*;
- viii. Whether Plaintiffs and Class Members are entitled to restitution under Cal. *Bus. & Prof. Code* § 17200-17203;
- ix. Whether Plaintiffs and Class Members are entitled to declaratory/injunctive relief under Cal. *Bus. & Prof. Code* § 17535;
- x. Whether Plaintiffs and Class Members are entitled to attorneys’ fees and costs under Cal. *Code Civ. Proc.* § 1021.5, Nevada, Oregon and/or Texas law; and
- xi. Whether Defendants violated the Oregon Unlawful Trade Practices Act;
- xii. Whether Defendants violated the Nevada Deceptive Trade Practices Act;
- xiii. Whether Defendants violated the Texas Deceptive Trade Practices Act;
- xiv. Whether Plaintiffs and Class Members are entitled to statutory damages.

104. **Typicality:** Plaintiffs’ claims are typical of the claims of members of the Classes, as Plaintiffs were subject to the same common course of conduct by Defendants as all Class members. The injuries to each member of the Classes were caused directly by Defendants’ wrongful conduct as alleged herein.

///

1 105. **Adequacy of Representation:** Plaintiffs will fairly and adequately
2 represent and protect the interests of the Classes. Plaintiffs retained counsel with
3 substantial experience in handling complex class action litigation and litigation
4 against product manufacturers. Plaintiffs and their counsel are committed to
5 prosecuting this action vigorously on behalf of the Classes, and have financial
6 resources to do so.

7 106. **Superiority of Class Action:** A class action is superior to other
8 available methods for the fair and efficient adjudication of the present
9 controversy. Class members have little interest in individually controlling the
10 prosecution of separate actions because the individual damage claims of each
11 Class member are not substantial enough to warrant individual filings. In sum, for
12 many if not most Class members, a class action is the only feasible mechanism
13 that will allow them an opportunity for legal redress and justice. The conduct of
14 this action as a class action in this forum, with respect to some or all of the issues
15 presented herein, presents fewer management difficulties, conserves the resources
16 of the parties and of the court system, and protects the rights of each Class
17 member.

18 107. Moreover, individualized litigation would also present the potential
19 for varying, inconsistent, or incompatible standards of conduct for Defendants,
20 and would magnify the delay and expense to all parties and to the court system
21 resulting from multiple trials of the same factual issues. The adjudication of
22 individual Class members' claims would also, as a practical matter, be dispositive
23 of the interests of other members not parties to the adjudication, and could
24 substantially impair or impede the ability of other Class members to protect their
25 interests.

26 108. Plaintiffs and Class members have suffered and will continue to
27 suffer harm as a result of Defendants' unlawful and wrongful conduct. Defendants
28 have acted, or refused to act, on grounds generally applicable to the Classes,

1 thereby making appropriate final and injunctive relief with regard to the Class
2 members as a whole.

3 **VII. CAUSES OF ACTION**

4 **FIRST CAUSE OF ACTION**

5 **VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT,**
6 **CAL. CIV. CODE §§ 1750, *ET SEQ.***

7 **(Against All Defendants on Behalf of Plaintiffs Michael Hellman, Francisco**
8 **Berlanga, and the California Class)**

9 109. Plaintiffs hereby incorporate by reference and re-allege each and
10 every allegation set forth in each and every preceding paragraph of this
11 Complaint, as though fully set forth herein.

12 110. Hellman and Berlanga bring this cause of action on behalf of
13 themselves and the California Class against all Defendants.

14 111. The California Consumers Legal Remedies Act (the “CLRA”),
15 Cal. Civ. Code §§ 1770, *et seq.*, was enacted to protect consumers against
16 unfair and deceptive business practices. It creates a non-exclusive statutory
17 remedy for unfair methods of competition and unfair or deceptive acts or
18 business practices. Its self-declared purpose is to protect consumers against these
19 unfair and deceptive business practices, and to provide efficient and economical
20 procedures to secure such protection. Cal. Civ. Code § 1760. The CLRA was
21 designed to be liberally construed and applied in favor of consumers to promote
22 its underlying purposes. *Id.* The CLRA applies to Defendants’ acts and
23 practices described herein because it extends to transactions that are intended to
24 result, or which have resulted, in the sale or lease of goods or services to
25 Plaintiffs and others similarly situated.

26 112. The Class Vehicles are a “good” within the meaning of Cal. Civ.
27 Code § 1761(a), and the transactions/agreements are “transactions” within the
28 meaning of Cal. Civ. Code § 1761(e).

113. Plaintiffs and California Class Members are “consumers” within the meaning of Cal. *Civ. Code* § 1761(d). Plaintiff and Class Members and Defendants are “persons” within the meaning of Cal. *Civ. Code* § 1761(c).

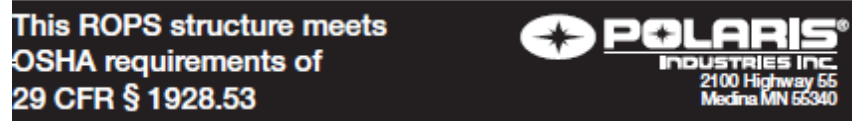
114. The CLRA prohibits “unfair methods of competition and unfair or deceptive acts or practices,” including but not limited to:

- (a) Cal. *Civ. Code* § 1770(a)(5) “Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have”;
- (b) Cal. *Civ. Code* § 1770(a)(7) “Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another”;
- (c) Cal. *Civ. Code* § 1770(a)(9) “Advertising goods or service with intent not to sell them as advertised”;
- (d) Cal. *Civ. Code* § 1770(a)(13) “Making false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions”;
- (e) Cal. *Civ. Code* § 1770(a)(14) “Represent that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law”;
- (f) Cal. *Civ. Code* § 1770(a)(16) “Represent that the subject of a transaction has been supplied in accordance with a previous representation when it has not”; and
- (g) Cal. *Civ. Code* § 1770(a)(19) “Inserting an unconscionable provision in the contract.

115. Any waiver by Plaintiffs and the California Class members of the provisions of the CLRA is contrary to public policy and is unenforceable and void

under Cal. *Civ. Code* § 1751.

116. Polaris includes stickers like the following to suggest that their vehicles meet these OSHA requirements:



117. The stickers are placed on Class Vehicles and are visible at the point of sale where consumers are also informed that Class Vehicles meet all applicable standards and regulations, including self-adopted regulations, and meet OSHA requirements of 29 C.F.R. § 1928.53, when in fact, they do not.

118. On or around May 26, 2018, Hellman purchased a 2018 Polaris RZR Turbo S in Tehama County, California.

119. Hellman saw and read the label/sticker on the 2018 Polaris RZR XP similar to the picture listed below:



120. Based on Hellman's employment experience in the HVAC industry, he understood that OSHA requirements were federal regulations pertaining to safety. Hellman read the sticker on the 2018 Polaris RZR Turbo S and understood the language to mean that the vehicle's ROPS structure met federal standards for safety and that the vehicle was safe for use by him, his family, and friends.

121. Hellman, in seeing and reading the sticker, relied on the language contained therein to purchase the 2018 Polaris RZR Turbo S. If the sticker said that the ROPS structure failed to meet OSHA requirements, he would not have purchased the 2018 Polaris RZR Turbo S.

122. Hellman bought a Cage WRX aftermarket ROPS after Polaris recalled certain ROPS. Hellman became aware of how weak Polaris' cages were

1 and did not feel it provided the safety necessary to protect himself and his
2 passengers.

3 123. In or around May 18, 2019, Berlanga purchased a 2018 Polaris RZR
4 570 EPS in California.

5 124. Berlanga saw and read the label/stickers on the 2018 Polaris RZR
6 570 EPS as depicted below:



15 125. Berlanga was originally going to purchase an ATV, not a UTV.
16 However, based on the fact the 2018 Polaris RZR 570 EPS had a roll cage/ROPS
17 and being informed that it met OSHA standards for safety, Berlanga read the
18 sticker on the 2018 Polaris RZR 570 EPS and understood the language to mean
19 that the vehicle's ROPS structure met federal standards for safety and that the
20 vehicle was safe for use by him, his family, and friends.

21 126. Berlanga, in seeing and reading the sticker, relied on the language
22 contained therein to purchase 2018 Polaris RZR 570 EPS. If the sticker said that
23 the ROPS structure failed to meet OSHA requirements, he would not have
24 purchased the 2018 Polaris RZR 570 EPS.

25 127. None of the Class Vehicles sold by Polaris meet the OSHA
26 requirements of 29 C.F.R. § 1928.53. Polaris tell all of their customers that their
27 ROPS are safe because they meet this standard. They do not.

28 ///

1 128. In failing to provide consumers accurate and truthful information
2 about the true nature and characteristics of the Class Vehicles pertaining to
3 compliance with all applicable federal and state statutes, standards, and
4 regulations, including self-adopted regulations, specifically OSHA requirements
5 of 29 C.F.R. § 1928.53, consumers are damaged based on the benefit of the
6 bargain, that they have to retrofit the Class Vehicles for adequate safety, and are
7 faced with a strong likelihood of serious injury or death.

8 129. Pursuant to Cal. *Civ. Code* § 1782, Plaintiffs intend to notify
9 Defendants of the particular violations of Cal. *Civ. Code* § 1770 (the “Notice
10 Letter”). If Defendants fail to comply with Plaintiffs’ demands within thirty days
11 of receipt of the Notice Letter, pursuant to Cal. *Civ. Code* § 1782, Plaintiffs will
12 amend this Complaint to request damages and other monetary relief under the
13 CLRA.

14 **SECOND CAUSE OF ACTION**

15 **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW,**

16 **CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.)**

17 **(Against All Defendants on Behalf of Plaintiffs Michael Hellman, Francisco**
18 **Berlanga, and the California Class)**

19 130. Plaintiffs hereby incorporate by reference and re-allege each and
20 every allegation set forth in each and every preceding paragraph of this
21 Complaint, as though fully set forth herein.

22 131. Hellman and Berlanga bring this cause of action on behalf of
23 themselves and the California Class against all Defendants.

24 132. The California Unfair Competition Law, Cal. *Bus. & Prof. Code* §§
25 17200, *et seq.*, (“UCL”) prohibits any unlawful, unfair or fraudulent business act
26 or practice.

27 133. On or around May 26, 2018, Hellman purchased a 2018 Polaris RZR
28 Turbo S in Tehama County, California.

1 134. Hellman saw and read the label/sticker on the 2018 Polaris RZR XP
2 similar to the picture listed below:



10 135. Based on Hellman's employment experience in the HVAC industry,
11 he understood that OSHA requirements were federal regulations pertaining to
12 safety. Hellman read the sticker on the 2018 Polaris RZR Turbo S and understood
13 the language to mean that the vehicle's ROPS structure met federal standards for
14 safety and that the vehicle was safe for use by him, his family, and friends.

15 136. Hellman, in seeing and reading the sticker, relied on the language
16 contained therein to purchase the 2018 Polaris RZR Turbo S. If the sticker said
17 that the ROPS structure failed to meet OSHA requirements, he would not have
18 purchased the 2018 Polaris RZR Turbo S.

19 137. Hellman bought a Cage WRX aftermarket ROPS after Polaris
20 recalled certain ROPS. Hellman became aware of how weak Polaris' cages were
21 and did not feel it provided the safety necessary to protect himself and his
22 passengers.

23 138. In or around May 18, 2019, Berlanga purchased a 2018 Polaris RZR
24 570 EPS in California.

25 139. Berlanga saw and read the label/stickers on the 2018 Polaris RZR
26 570 EPS as depicted below:

27 ///

28 ///



140. Berlanga was originally going to purchase an ATV, not a UTV. However, based on the fact the 2018 Polaris RZR 570 EPS had a roll cage/ROPS and being informed that it met OSHA standards for safety, Berlanga read the sticker on the 2018 Polaris RZR 570 EPS and understood the language to mean that the vehicle's ROPS structure met federal standards for safety and that the vehicle was safe for use by him, his family, and friends.

141. Berlanga, in seeing and reading the sticker, relied on the language contained therein to purchase 2018 Polaris RZR 570 EPS. If the sticker said that the ROPS structure failed to meet OSHA requirements, he would not have purchased the 2018 Polaris RZR 570 EPS.

UNLAWFUL

142. Defendants committed "unlawful" business acts and practices by engaging in conduct that violates the CLRA, Cal. Civ. Code §§ 1770(a)(5), (a)(7), (a)(9), (a)(13), (a)(14) and (a)(19) as well as California's False Advertising Law.

143. Such conduct is ongoing and continues to this date and violates the unlawful prong of the UCL.

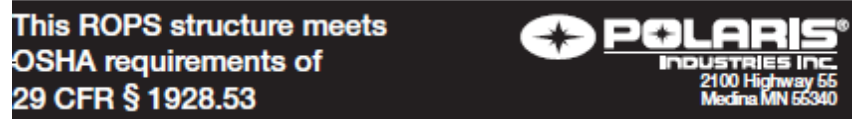
FRAUDULENT

144. In order to prevail under the "fraudulent" prong of the UCL, a consumer must allege that the fraudulent business practice was likely to deceive members of the public.

///

1 145. The test for “fraud” as contemplated by Cal. *Bus. & Prof. Code* §§
2 17200, *et seq.* is whether the public is likely to be deceived. Unlike common law
3 fraud, a UCL violation can be established even if no one was actually deceived,
4 relied upon the fraudulent practice, or sustained any damage.

5 146. Polaris includes nice stickers like the following to suggest that their
6 vehicles meet these OSHA requirements:



9 147. The stickers are placed on Class Vehicles and are visible at the point
10 of sale where consumers are also informed that Class Vehicles meet all applicable
11 standards and regulations, including self-adopted regulations, and meet OSHA
12 requirements of 29 C.F.R. § 1928.53, when in fact, they do not.

13 148. None of the Class Vehicles sold by Polaris meet the OSHA
14 requirements of 29 C.F.R. § 1928.53. Polaris tell all of their customers that their
15 ROPS systems are safe because they meet this standard. They do not.

16 149. Defendants fraudulently informed Plaintiffs and the California Class
17 that the Class Vehicles passed the OSHA 29 C.F.R. § 1928.53 test when Polaris
18 used the inappropriate gross vehicle weight instead of 110 pounds multiplied by
19 either the maximum power take off horsepower of 95% of the net flywheel
20 horsepower, which would be between four and nearly seven times a greater force
21 for the test. This induced Plaintiffs and other class members to purchase the Class
22 Vehicles at inflated prices based on those misrepresentations.

23 150. In failing to provide consumers accurate and truthful information
24 about the true nature and characteristics of the Class Vehicles pertaining to
25 compliance with all applicable federal and state statutes, standards, and
26 regulations, including self-adopted regulations, specifically OSHA requirements
27 of 29 C.F.R. § 1928.53, consumers are damaged based on the benefit of the
28 bargain, that they have to retrofit the Class Vehicles for adequate safety, and are

1 faced with a strong likelihood of serious injury or death.

2 151. Thus, Defendants' conduct has violated the "fraudulent" prong of
3 Cal. *Bus. & Prof. Code* § 17200.

4 152. Such conduct is ongoing and continues to this date and violates the
5 fraudulent prong of the UCL.

6 153. On April 6, 2017 in *McGill v. Citibank, N.A.*, 2 Cal.5th 945 (2017),
7 the California Supreme Court ruled that any contract that waives the statutory
8 remedy of public injunctive relief under the Unfair Competition Law, False
9 Advertising Law, and Consumers Legal Remedies Act is contrary to California
10 public policy and this unenforceable under California law. Plaintiffs and the Class
11 seek injunctive relief under the Unfair Competition Law, Cal. *Bus. & Prof. Code*
12 §§ 17200, *et seq.* due to Defendants' violation of the False Advertising Law,
13 Consumer Legal Remedies Act, Breach of Express Warranty, and Breach of
14 Implied Warranty based on Defendants' unlawful, unfair, and fraudulent business
15 practices and misleading advertisements that the Class Vehicles meet all
16 applicable federal and state statutes, standards, regulations, including OSHA
17 requirements of 29 C.F.R § 1928.53. Plaintiffs and the California Class seek to
18 enjoin Defendants' illegal business practices of advertising and informing
19 consumers that the Class Vehicles meet all applicable federal and state statutes,
20 standards, regulations, including OSHA requirements of 29 C.F.R § 1928.53,
21 when they in fact, do not.

22 154. As such, Plaintiffs and the California Class seek public injunctive
23 relief to prevent Defendants from continuing with their unlawful business acts and
24 practices as alleged herein to ensure that Defendants do not continue to harm the
25 general public by continuing to engage in the unlawful business acts and practices
26 as alleged herein.

27 155. Plaintiffs, individually, and on behalf of all California consumers,
28 seek individual, representative, and public injunctive relief and any necessary

1 order or judgments that will prevent Defendants from continuing with their
2 unlawful business acts and practices as alleged herein.

3 156. Plaintiffs seek declaratory relief, restitution and disgorgement of all
4 profits obtained, and public injunctive relief as previously described.

5 **THIRD CAUSE OF ACTION**

6 **VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW,**

7 ***CAL. BUS. & PROF. CODE §§ 17500, ET SEQ.***

8 **(Against All Defendants on Behalf of Plaintiffs Michael Hellman, Francisco**
9 **Berlanga, and the California Class)**

10 157. Plaintiffs hereby incorporate by reference and re-allege each and
11 every allegation set forth in each and every preceding paragraph of this
12 Complaint, as though fully set forth herein.

13 158. Hellman and Berlanga bring this cause of action on behalf of
14 themselves and the California Class against all Defendants.

15 159. Pursuant to the California False Advertising Law, *Cal. Bus. & Prof.*
16 *Code* §§ 17500, *et seq.*, (“FAL”) it is unlawful to engage in advertising “which is
17 untrue or misleading, and which is known, or which by the exercise of reasonable
18 care should be known, to be untrue or misleading.”

19 160. Defendants caused to be made or disseminated through California
20 and the United States, through advertising, marketing and other publications,
21 statements that were untrue or misleading, including statements on the stickers on
22 Class Vehicles and in nationally distributed print and video advertisements that
23 the Class Vehicles were passed the OSHA 29 C.F.R. § 1928.53 test. These
24 statements were known, or which by the exercise of reasonable care should have
25 been known, to Defendants to be untrue and misleading to consumers, including
26 Plaintiffs and the other Class Members.

27 161. On or around May 26, 2018, Hellman purchased a 2018 Polaris RZR
28 Turbo S in Tehama County, California.

1 162. Hellman saw and read the label/sticker on the 2018 Polaris RZR XP
2 similar to the picture listed below:



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10 163. Based on Hellman's employment experience in the HVAC industry,
11 he understood that OSHA requirements were federal regulations pertaining to
12 safety. Hellman read the sticker on the 2018 Polaris RZR Turbo S and understood
13 the language to mean that the vehicle's ROPS structure met federal standards for
14 safety and that the vehicle was safe for use by him, his family, and friends.

15 164. Hellman, in seeing and reading the sticker, relied on the language
16 contained therein to purchase the 2018 Polaris RZR Turbo S. If the sticker said
17 that the ROPS structure failed to meet OSHA requirements, he would not have
18 purchased the 2018 Polaris RZR Turbo S.

19 165. Hellman bought a Cage WRX aftermarket ROPS after Polaris
20 recalled certain ROPS. Hellman became aware of how weak Polaris' cages were
21 and did not feel it provided the safety necessary to protect himself and his
22 passengers.

23 166. In or around May 18, 2019, Berlanga purchased a 2018 Polaris RZR
24 570 EPS in California.

25 167. Berlanga saw and read the label/stickers on the 2018 Polaris RZR
26 570 EPS as depicted below:

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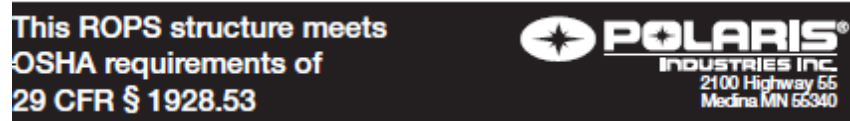
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168. Berlanga was originally going to purchase an ATV, not a UTV. However, based on the fact the 2018 Polaris RZR 570 EPS had a roll cage/ROPS and being informed that it met OSHA standards for safety, Berlanga read the sticker on the 2018 Polaris RZR 570 EPS and understood the language to mean that the vehicle's ROPS structure met federal standards for safety and that the vehicle was safe for use by him, his family, and friends.

169. Berlanga, in seeing and reading the sticker, relied on the language contained therein to purchase 2018 Polaris RZR 570 EPS. If the sticker said that the ROPS structure failed to meet OSHA requirements, he would not have purchased the 2018 Polaris RZR 570 EPS.

170. Polaris includes nice stickers like the following to suggest that their vehicles meet these OSHA requirements:



171. The stickers are placed on Class Vehicles and are visible at the point of sale where consumers are also informed that Class Vehicles meet all applicable standards and regulations, including self-adopted regulations, and meet OSHA requirements of 29 C.F.R. § 1928.53, when in fact, they do not.

172. None of the Class Vehicles sold by Polaris meet the OSHA requirements of 29 C.F.R. § 1928.53. Polaris tell all of their customers that their ROPS systems are safe because they meet this standard. They do not.

1 173. In failing to provide consumers accurate and truthful information
2 about the true nature and characteristics of the Class Vehicles pertaining to
3 compliance with all applicable federal and state statutes, standards, and
4 regulations, including self-adopted regulations, specifically OSHA requirements
5 of 29 C.F.R. § 1928.53, consumers are damaged based on the benefit of the
6 bargain, that they have to retrofit the Class Vehicles for adequate safety, and are
7 faced with a strong likelihood of serious injury or death.

8 174. As a direct and proximate result of Defendants' misleading and false
9 advertising, Plaintiffs and the other California Class Members have suffered
10 injury in fact and have lost money or property. Plaintiffs reasonably relied upon
11 Defendants' representations regarding the Class Vehicles. In reasonable reliance
12 on Defendants' false advertisements, Plaintiffs and other California Class
13 Members purchased, owned or leased Class Vehicles. In turn, Plaintiffs and other
14 California Class Members were have suffered injury in fact.

15 175. The misleading and false advertising described herein presents a
16 continuing threat to Plaintiffs and the California Class Members in that
17 Defendants persist and continue to engage in these practices, and will not cease
18 doing so unless and until forced to do so by this Court. Defendants' conduct will
19 continue to cause irreparable injury to consumers unless enjoined or restrained.
20 Plaintiffs are entitled to preliminary and permanent injunctive relief ordering
21 Defendants to cease their false advertising, as well as disgorgement and restitution
22 to Plaintiffs and all California Class Members, Defendants' revenues associated
23 with their false advertising, or such portion of those revenues as the Court may
24 find equitable.

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FOURTH CAUSE OF ACTION

VIOLATION OF THE OREGON UNLAWFUL TRADE PRACTICES ACT,

OR. REV. STAT. §§ 646.605, *ET SEQ.*

**(Against All Defendants on Behalf of Plaintiff Tim Artoff and
the Oregon Class)**

176. Plaintiffs hereby incorporate by reference and re-allege each and every allegation set forth in each and every preceding paragraph of this Complaint, as though fully set forth herein.

177. Artoff brings this cause of action on behalf of himself and the Oregon Class against all Defendants.

178. Polaris, Artoff and the Oregon Class are “persons” within the meaning of Or. Rev. Stat. § 646.605(4).

179. Polaris is engaged in “trade” or “commerce” within the meaning of Or. Rev. Stat. § 646.605(8).

180. The Oregon Unfair Trade Practices Act (“Oregon UTPA”) prohibits unfair or deceptive acts conducted in trade or commerce including but not limited to:

- Or. Rev. Stat. § 646.608(1)(b) “Causes likelihood of confusion or of misunderstandings as to the source, sponsorship, approval, or certification of real estate, goods or services”;
- Or. Rev. Stat. § 646.608(1)(c) “Causes likelihood of confusion or of misunderstandings as to affiliation, connection, or association with, or certification by, another”;
- Or. Rev. Stat. § 646.608(1)(e) “Representing that real estate, goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that the real estate, goods or services do not have...”;

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- 1 • Or. Rev. Stat. § 646.608(1)(g) “Representing that real estate, goods
2 or services are of a particular standard, quality, or grade, or that real
3 estate or goods are of a particular style or model, if the real estate,
4 goods or services are of another. have sponsorship, approval,
5 characteristics, ingredients, uses, benefits, quantities or qualities that
6 the real estate, goods or services do not have...”;
- 7 • Or. Rev. Stat. § 646.608(1)(i) “Advertises real estate, good or
8 services with intent not to provide the real estate, goods or services
9 as advertised...” and
- 10 • Or. Rev. Stat. § 646.608(1)(u) “Engages in any other unfair or
11 deceptive conduct in trade or commerce”;

12 181. Polaris is engaged in “trade” or “commerce” within the meaning of
13 Or. Rev. Stat. § 646.605(8).

14 182. In 2021, Artoff purchased a 2021 RZR Turbo S Velocity in Oregon.

15 183. Artoff saw and read the label/sticker on the 2021 RZR Turbo S
16 Velocity pictured below:



24 184. Based on Artoff’s employment experience as a peace officer, he
25 understood that OSHA requirements were federal regulations pertaining to safety.
26 Artoff read the sticker on the 2021 RZR Turbo S Velocity and understood the
27 language to mean that the vehicle’s ROPS structure met federal standards for
28 safety and that the vehicle was safe for use by him, his family, and friends.

1 185. Artoff, in seeing and reading the sticker, relied on the language
2 contained therein to purchase the 2021 RZR Turbo S Velocity. If the sticker said
3 that the ROPS structure failed to meet OSHA requirements, he would not have
4 purchased the 2021 RZR Turbo S Velocity.

5 186. None of the Class Vehicles sold by Polaris meet the OSHA
6 requirements of 29 C.F.R. § 1928.53. Polaris tell all of their customers that their
7 ROPS systems are safe because they meet this standard. They do not.

8 187. In failing to provide consumers accurate and truthful information
9 about the true nature and characteristics of the Class Vehicles pertaining to
10 compliance with all applicable federal and state statutes, standards, and
11 regulations, including self-adopted regulations, specifically OSHA requirements
12 of 29 C.F.R. § 1928.53, consumers are damaged based on the benefit of the
13 bargain, that they have to retrofit the Class Vehicles for adequate safety, and are
14 faced with a strong likelihood of serious injury or death.

15 188. Defendants' unfair or deceptive acts or practices were likely to and
16 did in fact deceive regulators and reasonable consumers, including Artoff and
17 Oregon Class members, about the true characteristics of the strength of the ROPS
18 meant to protect passengers, as well as the true value of the Class Vehicles.

19 189. Plaintiffs and Oregon Class members suffered ascertainable loss and
20 actual damages as a direct and proximate result of Polaris' misrepresentations and
21 its concealment of and failure to disclose material information. Plaintiffs and the
22 Oregon Class members who purchased the Class Vehicles would not have
23 purchased them at all and/or—if the Vehicles' true nature had been disclosed and
24 mitigated, and would have paid significantly less for them. Plaintiffs also suffered
25 diminished value of their vehicles, as well as diminished loss. Plaintiff and the
26 Oregon Class members did not obtain the benefit of the bargain from Polaris.

27 190. Polaris had a duty to refrain from unfair and deceptive practices
28 under the Oregon UTPA in the course of business.

191. Polaris' violations present a continuing risk to Artoff, the Oregon Class members and the general public. Polaris' unlawful acts and practices complained of herein affect the public interest.

192. Pursuant to Or. Rev. Stat. § 646.638, Artoff and the Oregon Class members seek an order enjoining Polaris' unfair and/or deceptive acts or practices, damages, punitive damages, and attorneys' fees, costs, and any other just and proper relief available under the Oregon UTPA.

FIFTH CAUSE OF ACTION

VIOLATION OF THE NEVADA DECEPTIVE TRADE PRACTICES ACT,

NEV. REV STAT. §§ 598.0903, ET SEQ.

**(Against All Defendants on Behalf of Plaintiff Cy Mitchell and
the Nevada Class)**

193. Plaintiffs hereby incorporate by reference and re-allege each and every allegation set forth in each and every preceding paragraph of this Complaint, as though fully set forth herein.

194. Mitchell brings this cause of action on behalf of himself and the Nevada Class against all Defendants.

195. Nev. Rev. State (NRS) 41.600(1) states that an action may be brought by any person who is a victim of consumer fraud.

196. NRS 41.600(2) defines "consumer fraud" as a "deceptive trade practice" as defined in NRS 598.0915 to NRS 598.0925.

197. The Nevada Deceptive Trade Practices Act ("Nevada DTPA"). NRS § 598.0915 provides that a person engages in a "deceptive trade practice" if, in the course of business or occupation, the person: "5. Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations or quantities of goods or services for sale or lease or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith"; "7. Represents that goods or services for sale or lease are of a particular standard,

1 quality or grade, or that such goods are of a particular style or model, if he or she
2 knows or should know that they are of another standard, quality, grade, style or
3 model”; “9. Advertises goods or services with intent not to sell or lease them as
4 advertised”; or “15. Knowingly makes any other false representation in a
5 transaction.

6 198. Polaris knowingly violated NRS 598.0915(13) by making false or
7 misleading statements regarding the safety of the Class Vehicles.

8 199. Polaris engaged in consumer fraud when it violated NRS 598.0915
9 by knowingly making false representations by representing to consumers that their
10 manufactured and sold Class Vehicles complied with the OSHA requirements of
11 29 C.F.R. 1928.53, when in fact they did not.

12 200. In 2019, Mitchell purchased a 2019 RZR XP Turbo new in Nevada.

13 201. Mitchell saw and read the label/sticker on the 2019 RZR XP Turbo
14 similar to the picture listed below:



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19 202. Mitchell understood that OSHA requirements were federal
20 regulations pertaining to safety. Mitchell read the sticker on the 2019 RZR XP
21 Turbo and understood the language to mean that the vehicle’s ROPS structure met
22 federal standards for safety and that the vehicle was safe for use by him, his
23 family, and friends.

24 203. Mitchell, in seeing and reading the sticker, relied on the language
25 contained therein to purchase the 2019 RZR XP Turbo. If the sticker said that the
26 ROPS structure failed to meet OSHA requirements, he would not have purchased
27 the 2019 RZR XP Turbo.

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1 204. Mitchell had a roll over and the cage collapsed due to it being weak
2 and unsafe for consumers.

3 205. Polaris intentionally and knowingly misrepresented material facts
4 regarding the Class Vehicles with intent to mislead Mitchell and the Nevada
5 Class.

6 206. Polaris knew or should have known its conduct violated the Nevada
7 DTPA.

8 207. In the course of their business, Polaris misrepresented, concealed and
9 suppressed material facts about the Class Vehicles and the actual strength of the
10 ROPS meant to protect consumers.

11 208. Defendants thus violated the Act by, at minimum: knowingly
12 representing that Class Vehicles have uses and benefits which they do not have;
13 representing that Class Vehicles are of a particular standard, quality, and grade
14 when they are not; advertising Class Vehicles with the intent not to sell or lease
15 them as advertised; and representing that the subject of a transaction involving
16 Class Vehicles has been supplied in accordance with a previous representation
17 when it has not; and knowingly making other false representations in a
18 transaction.

19 209. Polaris' actions as set forth above occurred in the conduct of trade or
20 commerce.

21 210. Mitchell and the Nevada Class members suffered ascertainable loss
22 and actual damages as a direct and proximate result of Polaris' misrepresentations
23 and its concealment of and failure to disclose material information. Plaintiffs and
24 the Oregon Class members who purchased the Class Vehicles would not have
25 purchased them at all and/or—if the Vehicles' true nature had been disclosed and
26 mitigated, and would have paid significantly less for them. Plaintiffs also suffered
27 diminished value of their vehicles, as well as diminished loss. Plaintiff and the
28 Oregon Class members did not obtain the benefit of the bargain from Polaris.

211. Accordingly, Mitchell and the Nevada Class seek their actual damages, punitive damages, an order enjoining Polaris' deceptive acts or practices, costs of Court, attorney's fees, and all other appropriate and available under the Nevada DTPA.

SIXTH CAUSE OF ACTION

VIOLATION OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT,

TEX. *Bus. & Com. Code* §§ 17.46, *et seq.*

**(Against All Defendants on Behalf of Plaintiff Jonathan Lollar and
the Texas Class)**

212. Plaintiffs hereby incorporate by reference and re-allege each and every allegation set forth in each and every preceding paragraph of this Complaint, as though fully set forth herein.

213. Polaris' conduct concerning the testing of its ROPS systems and labelling the vehicles which it intended to induce Plaintiff and Class Members with false information prior to purchase is unconscionable under the DTPA.

214. The DTPA makes unlawful any “[f]alse, misleading, or deceptive acts or practices in the conduct of any trade or commerce [...]” Tex. *Bus. & Com. Code* § 17.46. A plaintiff may maintain an action under the DTPA where: (1) he is a consumer; (2) the defendant engaged in a false, misleading, or deceptive act; and (3) the act constituted a producing cause of the plaintiff's damages. *See id.* § 17.50(a); *see also Doe v. Boys Clubs of Greater Dallas, Inc.*, 907 S.W.2d 472, 478 (Tex. 1995).

215. Lollar and Class Members are “consumers” within the meaning of the DTPA. Within the relevant period, Plaintiff and Class Members each purchased at least one of Polaris’ Class Vehicles.

216. Polaris engaged in “false, misleading, or deceptive acts” within the meaning of the DTPA.

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1 217. The DTPA prohibits “unfair methods of competition and unfair or
2 deceptive acts or practices,” including but not limited to:

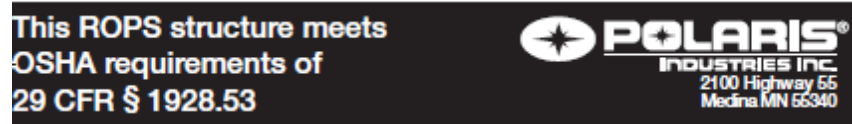
- 3 • *Tex. Bus. & Com. Code* § 17.46(b)(2): “causing confusion or
4 misunderstanding as to the source, sponsorship, approval, or
5 certification of goods or services”;
- 6 • *Tex. Bus. & Com. Code* § 17.46(b)(5): “representing that goods or
7 services have sponsorship, approval, characteristics, ingredients,
8 uses, benefits, or quantities which they do not have or that a person
9 has a sponsorship, approval, status, affiliation, or connection which
10 the person does not”;
- 11 • *Tex. Bus. & Com. Code* § 17.46(b)(7): “representing that goods or
12 services are of a particular standard, quality, or grade, or that goods
13 are of a particular style or model, if they are of another”;
- 14 • *Tex. Bus. & Com. Code* § 17.46(b)(13): “knowingly making false or
15 misleading statements of fact concerning the need for parts,
16 replacement, or repair service”;
- 17 • *Tex. Bus. & Com. Code* § 17.46(b)(22): “representing that work or
18 services have been performed on, or parts replaced in, goods when
19 the work or services were not performed or the parts replaced”; and
- 20 • *Tex. Bus. & Com. Code* § 17.46(b)(24): “failing to disclose
21 information concerning goods or services which was known at the
22 time of the transaction if such failure to disclose such information
23 was intended to induce the consumer into a transaction into which
24 the consumer would not have entered had the information been
25 disclosed[.]”

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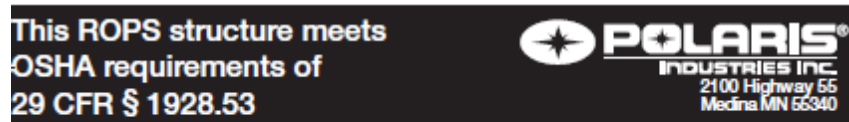
1 218. Polaris includes nice stickers like the following to suggest that their
2 vehicles meet these OSHA requirements:



5 219. The stickers are placed on Class Vehicles and are visible at the point
6 of sale where consumers are also informed that Class Vehicles meet all applicable
7 standards and regulations, including self-adopted regulations, and meet OSHA
8 requirements of 29 C.F.R. § 1928.53, when in fact, they do not.

9 220. Polaris' false, misleading, and/or deceptive acts constituted a
10 producing cause of Lollar and the Class Members' damages within the meaning
11 of the DTPA.

12 221. In or around December 19, 2020, Lollar purchased a 2021 Polaris
13 RZR XP 4 Turbo in Texas. Lollar saw and read the stickers on the 2021 Polaris
14 RZR XP 4 Turbo which contained the sticker at the time of sale as depicted
15 below, suggesting that their vehicles meet these OSHA requirements:



18 222. Lollar read the sticker on the 2021 Polaris RZR XP 4 Turbo and
19 understood the language to mean that the vehicle's ROPS structure met federal
20 standards for safety and that the vehicle was safe for use by him, his family, and
21 friends.

22 223. Lollar, in seeing and reading the sticker, relied on the language
23 contained therein to purchase the 2021 Polaris RZR XP 4 Turbo. If the sticker
24 said that the ROPS structure failed to meet OSHA requirements, he would not
25 have purchased the 2021 Polaris RZR XP 4 Turbo.

26 224. None of the Class Vehicles sold by Polaris meet the OSHA
27 requirements of 29 C.F.R. § 1928.53. Polaris tells all of their customers that their
28 ROPS are safe because they meet this standard. They do not.

1 225. Polaris also used a load distributor when conducting the tests at the
2 already artificially low “weight.” This caused the load to not be applied directly to
3 the portion of the ROPS being measured, but to be spread across a greater
4 mass/area. As a result, even the Weight using the Gross Vehicle Weight” was not
5 applied correctly to the ROPS frame.

6 226. In failing to provide consumers accurate and truthful information
7 about the true nature and characteristics of the Class Vehicles pertaining to
8 compliance with all applicable federal and state statutes, standards, and
9 regulations, including self-adopted regulations, specifically OSHA requirements
10 of 29 C.F.R. § 1928.53, consumers are damaged based on the benefit of the
11 bargain, that they have to retrofit the Class Vehicles for adequate safety, and are
12 faced with a strong likelihood of serious injury or death.

13 227. Polaris’ conduct concerning the testing of its ROPS and labelling the
14 vehicles which it intended to induce Lollar and Class Members with false
15 information prior to purchase is unconscionable under the DTPA.

16 228. Lollar and Texas Class Members have been damaged by Polaris’
17 violation of the DTPA and are entitled to relief.

18 229. Lollar brings this cause of action on behalf of himself and the Texas
19 Class against all Defendants.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs, individually and on behalf of the Class, pray for
22 relief and judgment as follows:

- 23 1. Certifying the Classes as requested herein;
24 2. Providing such further relief as may be just and proper.
25 3. Appointing Plaintiffs and their counsel to represent the Classes;

26 In addition, Plaintiffs, and the Class Members pray for further judgment as
27 follows:

- 28 4. Restitution of the funds improperly obtained by Defendants;

5. All compensatory or special damages;
6. Any and all statutory enhanced damages;
7. All reasonable and necessary attorneys' fees and costs provided by statute, common law or the Court's inherent power;
8. For equitable and injunctive relief, including public injunctive relief; and
9. Any and all other relief that this Court deems just and proper.

Dated: May 25, 2021

Respectfully submitted,

By: s/ John P. Kristensen

John P. Kristensen (SBN 224132)

KRISTENSEN LLP

Todd M. Friedman, Esq. (SBN 216752)

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

Christopher W. Wood (SBN 193955)

DREYER BABICH BUCCOLA WOOD

CAMPORA, LLP

*Attorneys for Plaintiffs and all others
similarly situated*

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury for all such triable claims.

Dated: May 25, 2021

Respectfully submitted,

By: /s/ John P. Kristensen

John P. Kristensen (SBN 224132)
KRISTENSEN LLP

Todd M. Friedman, Esq. (SBN 216752)
LAW OFFICES OF TODD M. FRIEDMAN, P.C.

Christopher W. Wood (SBN 193955)
**DREYER BABICH BUCCOLA WOOD
CAMPORA, LLP**

*Attorneys for Plaintiffs and all others
similarly situated*

DECLARATION OF MICHAEL HELLMAN

I, Michael Hellman, declare that if called as a witness, I could and would competently testify to the following facts:

1. I submit this declaration pursuant to Section 1780(d) of the California Consumer Legal Remedies Act. I have personal knowledge of the matters set forth below and as a witness, I could and would be competent to testify thereto.

2. It is my understanding that defendants Polaris Industries, Inc, a Delaware Corporation, Polaris Sales, Inc., a Minnesota Corporation, and Polaris Industries, Inc., a Minnesota Corporation conduct regular and sustained business in Tehama County, California.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct and that this declaration was executed on 5/25/2021 in California.

DocuSigned by:

Michael Hellman

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Michael Hellman